IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 291 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DALPATBHAI LAXMANBHAI PATEL
Versus
BAPUBHAI MOTIBHAI & ORS

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Appearance :
MR SK BUKHARI for Appellant
Respondent No 1 deleted
Respondents No.2 & 3 served
MR SN SHELAT for Respondent No. 4
MR HARDIK C RAWAL for Respondent 5

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA
and
HONOURABLE MR.JUSTICE MD SHAH
Date : 18/04/2006

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 The instant Appeal is preferred by original claimant of Motor Accident Claim Petition No. 318 of 1982 against the judgment and award delivered by learned Motor Accident Claims Tribunal (Main), Surat, on 29th of December, 1983.

2 The present appellant along with others were travelling as passengers in ST Bus No. GRS 7510 on 9th of June, 1982, being driven by Opponent No.4 herein and while this bus was proceeding towards Surat and reached nearby signboard of Village Pal, a truck bearing No. GTT 4865, driven by one Bapubhai Motibhai, came from opposite direction, and both the vehicles collided head on at about 4.45 p.m., causing injuries to the passengers of the said ST Bus. In the same accident, for fatal injuries, etc. other claim petitions were also filed and disposed of by learned Motor Accident Claims Tribunal, Surat, by common judgment and award, as aforesaid. Motor Accident Claim Petition No.318 of 1982 had been preferred by the appellant for compensation of injuries, he received in the said accident.

3 While dealing with the issue of negligence, after considering the evidence on record, the learned

Tribunal came to the conclusion that it was a case of composite liability and the accident occurred on account of rash and negligent driving of the respective Drivers of ST Bus as well as of the truck.

4 The present appellant made out a case before the Tribunal that the bar of front seat of the bus, on account of head on collision between the ST Bus and Truck, struck to his both legs and left hand, causing bone fractures. He was taken to Civil Hospital and was kept as an indoor patient. Initially, plaster was kept on his legs, but ultimately, after one month, his right leg was amputated from above knee. He was again required to hospitalize for 25 days and was operated for bone grafting fracture on left hand. He was admitted to hospital for third time and was operated for the left hand where he was kept as an indoor patient for one month. He was doing work of milk distribution in Chorasi Dairy at surat for about 7 years and used to supply milk to customers on cycle. His monthly income was Rs. 454/-. He was getting perquisite including bonus. He himself examined and Dr. D.N. Desai was examined as his witness. It was concluded by the Tribunal that it was clear from the medical certificates, cards, cash papers, etc that

the appellant suffered permanent disablement loss to the extent of 70% though according to Dr. D.N. Desai, Orthopaedic Surgeon, the permanent partial disablement of appellant was to the tune of 85% of both lower limbs and upper left limb. The appellant was aged about 45 years on the date of accident i.e. on 9th of June, 1982.

5 In all, the claim petition was filed by the present appellant, for the recovery of compensation of Rs.3 lakhs. Learned Tribunal after assessing circumstances and evidence on record, awarded compensation of Rs. 96,170/- to the claimant along with running interest at the ate of 6% per annum till realization of the amount.

6 Being aggrieved, this Appeal is preferred for enhancement of the amount of compensation by modifying and enhancing the amount of compensation to the tune of Rs. 40,000/- by way of additional compensation to the appellant.

7 Learned Advocate for the appellant Mr. S.K. Bukhari submitted that it is a case of permanent disablement to the extent of 85% as proved by witness Dr.

D.N.Desai. However, learned Tribunal assessed functional disability at 70% only and, therefore, the amount which is awarded towards this head being Rs. 57,000/- as pecuniary loss is required to be enhanced assessing the functional disability at 85%. It is also submitted that at the time of the accident the appellant was aged 45 years, yet the learned Tribunal awarded only 10 multipliers, which according to the facts of the case, at least 13 multipliers ought to have been allowed. It is submitted that the amount is required to be enhanced towards this head of compensation. It is also submitted that this is a case of amputation and permanent functional disability and non-pecuniary compensation which is assessed by the Tribunal at Rs. 25,000/- towards pain, shock and suffering and loss of enjoyment of life is also required to be enhanced. It is, therefore, submitted that on all these three different heads, in all, amount of Rs. 40,000/- is required to be enhanced by way of additional compensation to the appellant and Appeal is required to be allowed.

8 On the other hand, learned Advocate Mr. Hardik C Rawal for respondent No.5 Gujarat State Road Transport Corporation submitted that the learned Tribunal did not

commit any error in assessing compensation which is strictly in accordance with the facts of the case and law prevalent. It is submitted that though the learned Tribunal allowed multiplier of 10 because appellant stated that he was to retire at the age of 55, even then, amount of Rs. 5,000/- was separately awarded by the learned Tribunal towards pecuniary loss for remaining period of five years after retirement and total pecuniary loss for the future income is awarded to the tune of Rs. 63,000/- which is just and reasonable. Learned Advocate for the respondent No.5 also submitted that even for the head of pain, shock and suffering no amount is required to be enhanced as sufficient and just amount of Rs. 25,000/- is awarded. It is submitted that, in any case, learned Tribunal awarded additional amount of Rs. 5,000/- for the period of five years after retirement and having regard to this also, the amount awarded for non-pecuniary head requires no enhancement. Learned Advocate Mr. Rawal relied upon a decision of this Court in the matter of MOHOMED HANIF DALLU vs. LUNKARAN GANPATRAM SHARMA, as reported in 1980 ACJ 333. It is, therefore, submitted that Appeal be dismissed with costs.

9 Having heard learned counsels and having gone

through the record of the case, it appears that the Appeal is filed for enhancement on all heads and thereby additional amount of Rs. 40,000/- is claimed in this appeal.

10 While going through the record, especially evidence produced, it appears that the proper and just amount is awarded by the Tribunal to the claimant for medical expenses even though the bills for purchase of medicines, etc. were not produced, but it was proved that the claimant had undergone protracted treatment in government hospital and was admitted as an indoor patient for three occasions. Though Dr. Desai is examined and he assessed the permanent partial disablement of the appellant at 85% of both lower limbs and upper left limb, but the learned Tribunal has rightly come to the conclusion that though it would not be easy for the claimant to drive cycle and work as a milk delivery man with one leg, still claimant could work by sitting on chair and with right hand and could do such work and earn. Keeping in mind the medical evidence and evidence of claimant, we are not inclined to interfere in the conclusion of the Tribunal that the claimant suffered permanent functional disablement to the extent of 70%

and, therefore, after considering his monthly income at Rs. 670/- and age of the appellant was 45 at the time of accident, the compensation on pecuniary head came to be assessed by the Tribunal and awarded Rs.63,000/- towards this head. Further, it was the case of the claimant that superannuation age in his service was 55 years and that he was aged 45 years at the time of the accident. Therefore, the learned Tribunal rightly applied 10 multiplier for pecuniary loss and even took into consideration the 5 years period after retirement and awarded an amount of Rs.5,000/- separately for such period. Thus, total amount of Rs. 63,000/- awarded by the Tribunal on pecuniary head is just and reasonable and we are not inclined to interfere in the quantum of compensation as awarded by the Tribunal.

11 So far as the non-pecuniary compensation is concerned, the claimant is awarded Rs. 25,000/- towards pain, shock and suffering and loss of enjoyment of life. From the facts of this case and from the evidence which is recorded by the Tribunal, it appears that some amount is required to be enhanced for this head of compensation. When we scanned through factual matrix, we found that claimant has proved that he had to be hospitalized on

three occasions. His right leg was amputated above knee. His left hand was fractured. He has suffered mental agony and pain by three months treatment. Above all, what is required to be considered is the occupation of the claimant before he met with the accident. It must be borne in mind that the claimant was milk delivery man and was distributing the milk on cycle. This job satisfaction of the claimant to deliver milk on cycle, be it of whatever trivial nature, it must have caused great shock to the claimant after the accident. Amputation of his leg, rendered him totally handicapped to ride cycle, let alone to do the work of milk distribution. It is always difficult to assess non-pecuniary damages. Ordinarily, guided by the factual matrix of the matter, particularly how the accident occurred and what consequence ensued and to what extent pain and shock were suffered by the claimant are the guidelines to assess non-pecuniary damages. Over and above, the fact that by amputation, integrity of body, that the claimant possessed before the accident, is totally lost. The present matter is required to be viewed from this angle.

12 Having considered over all circumstances, we

come to the conclusion that an amount of Rs. 10,000/- by way of additional compensation is required to be awarded to the claimant for the head of pain, shock and suffering and loss of enjoyment of life. The decision which is cited by the learned Advocate for the respondent No.5 would not be applicable to the facts of this case as firstly we do not find facts of the reported judgment in the matter of Mahomed Hanif Dallu (supra), and secondly, when even non-pecuniary damages are to be assessed having regard to the facts of a particular case, factual matrix of one case can never be a precedent for the factual matrix of the other case.

13 In above view of the matter, in the result, this Appeal is partly allowed. The judgment and award impugned in this Appeal is modified to the extent that respondents shall jointly and severally pay an additional amount of Rs 10,000/- by way of compensation to the present appellant towards the head on pain, shock and suffering with the running interest of 6% per annum on Rs. 10,000/- from the date of the accident till realization. This amount is to be awarded to the claimant in addition to the amount awarded by the learned Tribunal. The respondent No. 5 shall deposit the amount of Rs. 10,000/-

along with the interest within eight weeks from today before the Tribunal.

(J.R.VORA, J.)

(M.D.SHAH, J.)

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